

## Message Text

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INFO OCT-01 EA-06 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

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R 281830Z MAY 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 0411

INFO AMEMBASSY LONDON

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DEPARTMENT PLEASE PASS TREASURY AND FEDERAL RESERVE

E.O. 11652: N/A

TAGS: EINV, XG, JA, AS, GW

SUBJECT: FOREIGN DIRECT INVESTMENT IN GERMANY

REF: A. STATE 107242, B. BONN-A397, AUGUST 5, 1974,

C. BONN 1198; D. BONN 1924; E. BONN 2617;

F. BONN 5833; G. BONN 6107; H. BONN A-116,

MARCH 1, 1074; I. BONN 18624, 1974

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1. SUMMARY. THE FRG HAS AN OPEN AND LIBERAL POLICY

TOWARD FOREIGN DIRECT INVESTMENT. THERE ARE NO RESTRICTIONS ON OR LICENSING REQUIREMENTS FOR SUCH INVESTMENT. FOREIGN AND DOMESTIC INVESTORS GENERALLY ENJOY EQUAL TREATMENT AND NO DISTINCTIONS ARE MADE BETWEEN FOREIGN INVESTMENT IN EXISTING DOMESTIC FIRMS AND THE ESTABLISHMENT OF NEW FIRMS BY NON-RESIDENTS. WHILE THE FRG CAPITAL CONTROL PROGRAM HAS BEEN LARGELY DISMANTLED DURING THE PAST YEAR AND A HALF, CERTAIN TYPES OF CAPITAL INFLOWS CONTINUE TO BE RESTRICTED (SEE PARA 3 BELOW). REPORTING IS REQUIRED FOR THE IMPORT AND EXPORT OF CAPITAL ABOVE ESTABLISHED MINIMUMS. SUCH REPORTING IS FOR STATISTICAL PURPOSES, PRIMARILY RELATED TO BALANCE OF PAYMENTS. THIS YEAR A VOLUNTARY NOTIFICATION PROCEDURE WAS ESTABLISHED WHEREBY COMMERCIAL BANKS REPORT TO THE GOVERNMENT ANY FOREIGN PURCHASE ORDERS FOR STOCKS INVOLVING A SIGNIFICANT INTEREST IN EXISTING DOMESTIC ENTERPRISES. NEVERTHELESS, FACED WITH PUBLIC PRESSURE FOLLOWING SEVERAL LARGE OPEC INVESTMENTS THE GOVERNMENT HAS BEGUN STUDYING THE NEED FOR CERTAIN CHANGES IN RELEVANT LAWS BUT APPEARS HESITANT TO FORMALLY INTRODUCE ANY MAJOR PROPOSALS WHICH WOULD GET THE GOVERNMENT INVOLVED IN SCREENING AND MONITORING ON A CASE-BY-CASE BASIS. END SUMMARY.

2. GENERAL POLICY AND RELEVANT LAWS/REGULATIONS. THE TRADITIONAL LIBERAL POLICY AND ATTITUDE OF THE FRG TOWARD FOREIGN DIRECT INVESTMENTS ARE CLEARLY SET FORTH IN THE LAW ON FOREIGN TRADE AND PAYMENTS (AUSSENWIRTSCHAFTSGESETZ) WHICH STATES IN THE FIRST SENTENCE THAT THE EXCHANGE OF GOODS AND SERVICES, CAPITAL TRANSACTIONS, PAYMENTS AND OTHER ECONOMIC RELATIONS WITH FOREIGN NATIONS ARE IN PRINCIPLE FREE AND UNRESTRICTED.

3. TO THE EXTENT THAT RESTRICTIVE MEASURES ARE LEGALLY PERMITTED -- NOTABLY IN FULFILLMENT OF INTERNATIONAL COMMITMENTS (SECTION 5 OF ABOVE LAW), THE PRESERVATION OF DOMESTIC ECONOMIC STABILITY (SECTION 6) AND IN THE AREA OF NATIONAL SECURITY (SECTION 7) -- THEY MUST BE LIMITED TO SPECIFIC PURPOSES, MUST BE FORMULATED IN SUCH A MANNER AS TO INTERFERE AS LITTLE AS POSSIBLE WITH THE LIMITED OFFICIAL USE

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R 281830Z MAY 75

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FREEDOM OF ECONOMIC ACTIVITY, AND ARE SUBJECT TO  
PARLIAMENTARY REVIEW. THE PROVISIONS COVERED UNDER  
SECTIONS 5, 6 AND 7 HAVE NEVER BEEN EXERCISED FOR THE  
PURPOSE OF EXCLUDING FOREIGN INVESTMENT.

4. RESTRICTIONS, AS STATED IN THE LAW, ARE LIMITED TO  
LICENSING AND PROHIBITIONS. LICENSING IS PRESENTLY  
REQUIRED FOR FOREIGN PURCHASE OF FIXED INTEREST  
SECURITIES WITH A FULL OR REMAINING MATURITY OF LESS  
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THAN FOUR YEARS; PURCHASES BY NON-RESIDENTS FROM RESIDENTS OF DOMESTIC DM DENOMINATED TREASURY BILLS, TREASURY NOTES AND BILLS OF EXCHANGE DRAWN OR ACCEPTED BY A RESIDENT; AND PAYMENTS OF INTEREST ON NON-RESIDENT DEPOSITS HELD WITH GERMAN BANKS (SAVINGS ACCOUNTS OF INDIVIDUALS UP TO DM 50,000 ARE EXEMPT). THERE ARE NO PROHIBITIONS ON INWARD DIRECT INVESTMENT SUCH AS REAL ESTATE PURCHASES, THE ESTABLISHMENT OF ANY ENTERPRISES BY FOREIGNERS AND THE PURCHASE OF DOMESTICALLY OWNED COMPANIES.

5. THE LAW DOES PROVIDE FOR AN EXTENSIVE NUMBER OF SPECIAL POWERS WHICH CAN, UNDER EXPLICIT PRECONDITIONS, BE EXERCISED TO RESTRICT OR EXCLUDE FOREIGN DIRECT OR PORTFOLIO INVESTMENT. THESE MEASURES (SET FORTH IN SECTION 23 OF AUSSENWIRTSCHAFTSGESETZ) MAY BE IMPOSED ONLY TO COUNTERACT A DETERIORATION IN THE PURCHASING POWER OF THE DUETSCHEMARK OR TO GUARANTEE EQUILIBRIUM IN THE BALANCE OF PAYMENTS. SECTION 23 PROVIDES THAT RESTRICTIVE MEASURES IN THE FOLLOWING AREAS COULD BE (AND IN PART HAVE BEEN) IMPLEMENTED TO ACCOMPLISH THESE OBJECTIVES: (A) THE PURCHASE OF REAL PROPERTY AND RIGHTS IN SUCH PROPERTY; (B) THE PURCHASE OF SHIPS INCLUDED IN THE SHIPPING REGISTER OF A COURT LOCATED IN THE FRG AND THE RIGHTS TO SUCH SHIPS; (C) THE PURCHASE OF ENTERPRISES OR INTEREST IN ENTERPRISES; (D) THE PURCHASE OF DOMESTIC SECURITIES BY NON-RESIDENTS; (E) THE PURCHASE BY NON-RESIDENTS OF BILLS OF EXCHANGE, DRAWN OR ACCEPTED BY A RESIDENT; (F) THE RAISING OF LOANS AND OTHER CREDITS, AS WELL AS THE UTILIZATION OF PERIODS OF PAYMENT BY RESIDENTS; (G) AND THE HOLDING OF ACCOUNTS BY NON-RESIDENTS WITH BANKS IN THE FRG. THE SAME SECTION ALSO STATES THAT RESTRICTIONS MAY BE IMPOSED ON THE ESTABLISHMENT OF ENTERPRISES LOCATED IN GERMANY AND THE PROVIDING OF ENTERPRISES, BRANCHES OR SUBSIDIARIES WITH CAPITAL EQUIPMENT INCLUDING WORKING CAPITAL AND INVESTMENT CAPITAL. WHEN GERMANY BEGAN TO RESTRICT THE INFLOW OF CAPITAL SEVERAL YEARS AGO, THE GOVERNMENT RESORTED TO SECTION 23, SPECIFICALLY THE MEASURES COVERED IN (D), (E), (F), AND (G) ABOVE AND THE PROVISION OF ENTERPRISES WITH WORKING AND INVESTMENT LIMITED OFFICIAL USE

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CAPITAL. IN ADDITION TO THESE, THE PARLIAMENT ADDED THE BARDEPOT INSTRUMENT (ARTICLE 6A OF THE LAW) WHICH GAVE THE GOVERNMENT THE AUTHORITY TO REQUIRE ENTERPRISES WHICH BORROW ABROAD TO PLACE A SPECIFIED AMOUNT OF MONEY IN NON-INTEREST BEARING ACCOUNTS. THE OBJECTIVE OF THE CAPITAL CONTROL MEASURES WAS AN EQUILIBRIUM IN BALANCE OF PAYMENTS. WITH THE EXCEPTION OF (E) AND (G), AS

DISCUSSED EARLIER, THE GOVERNMENT NO LONGER MAINTAINS  
RESTRICTIONS OR CONTROLS ON THE INFLOW OF CAPITAL.

6. NATIONAL TREATMENT. FOREIGN INVESTORS IN GERMANY  
ARE TREATED THE SAME AS DOMESTIC INVESTORS. THERE ARE  
NO LAWS WHICH APPLY SPECIFICALLY TO THE FORMER. THE  
ONE MINOR EXCEPTION TO THIS NONDISCRIMINATORY ATTITUDE  
IS FOUND IN PARAGRAPH 53 OF THE GERMAN BANKING LAW  
WHICH CONTAINS A PROVISION THAT REQUIRES FOREIGN BANKS  
OPERATING IN THE FRG AND WISHING TO ESTABLISH  
ADDITIONAL BRANCHES IN THE FRG TO SEEK BANKING LICENSES  
FOR EACH SUCH BRANCH. THE LAW FURTHER STATES THAT  
THE LICENSE MAY BE DENIED AMONG OTHER THINGS ON THE  
GROUNDS THAT THE BRANCH IS NOT JUSTIFIED BY THE NEEDS  
OF THE GERMAN ECONOMY. SINCE GERMAN BANKS ARE NOT  
REQUIRED TO OBTAIN LICENSES FOR BRANCH EXPANSION IN  
THE FRG AND CANNOT BE DENIED A LICENSE ON THE GROUNDS  
OF ABSENCE OF ECONOMIC NEED, THERE IS A DISCRIMINATORY  
ELEMENT IN THIS PROVISION. IN ACTUAL PRACTICE, HOWEVER,  
IT DOES NOT APPEAR THAT FOREIGN BANKS HAVE SUFFERED  
SUBSTANTIALLY FROM THESE PROVISIONS (SEE REF B FOR  
ELABORATION).

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R 281830Z MAY 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 0413  
INFO AMEMBASSY LONDON  
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7. INCENTIVE PROGRAMS. SINCE FOREIGN INVESTORS IN GERMANY ARE TREATED THE SAME AS DOMESTIC INVESTORS, THEY ACCORDINGLY QUALIFY FOR SPECIAL INCENTIVES OFFERED BY THE FEDERAL GOVERNMENT AND THE LAENDER GOVERNMENTS. INCENTIVES FROM THE FEDERAL AND STATE GOVERNMENTS ARE AVAILABLE FOR APPROVED INVESTMENTS IN MANPOWER, TECHNOLOGY AND INFRASTRUCTURE DEVELOPMENTS. CITIES AND LOCAL COMMUNITIES ALSO ON OCCASION HAVE OFFERED LIMITED OFFICIAL USE

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OR NEGOTIATED SPECIAL INCENTIVES IN EFFORTS TO GET PARTICULAR INDUSTRIES TO LOCATE IN THEIR AREAS. THESE INCENTIVES INCLUDE TAX BREAKS, LOW INTEREST LOANS, FREE OR SUBSIDIZED REAL ESTATE, DIRECT SUBSIDIES FOR CAPITAL EQUIPMENT, LAND AND ROAD DEVELOPMENT, ETC. INVESTORS IN WEST BERLIN QUALIFY FOR ADDITIONAL BENEFITS INCLUDING REFUND OF CERTAIN TURNOVER TAXES, REDUCED INCOME TAXES, FAVORABLE DEPRECIATION ALLOWANCES AND RISK GUARANTEES. THERE IS NO EVIDENCE THAT FOREIGN INVESTORS ARE TREATED DIFFERENTLY FROM DOMESTIC INVESTORS IN QUALIFYING FOR LOCAL INCENTIVES AND THERE ARE SEVERAL EXAMPLES WHERE US FIRMS HAVE NEGOTIATED SIZABLE INCENTIVE PACKAGES WITH LOCAL AUTHORITIES. (SUMMARY OF THE VARIOUS NATIONAL AND LOCAL INCENTIVE PROGRAMS TO FOLLOW SEPARATELY.)

8. SCREENING. THERE ARE NO FORMAL SCREENING OR MONITORING PROCEDURES FOR INWARD DIRECT INVESTMENT. HOWEVER, THERE IS AN INFORMAL UNDERSTANDING, WORKED OUT EARLIER THIS YEAR, BETWEEN THE GOVERNMENT AND

PRIVATE BANKS WHEREBY THE LATTER (WHICH IN GERMANY FUNCTION ALSO AS STOCK BROKERS) WILL REPORT TO THE FEDERAL MINISTRY OF ECONOMICS ANY PURCHASE ORDERS THEY RECEIVE FROM NON-RESIDENTS FOR MORE THAN 10 PERCENT OF THE SHARE OF A DOMESTIC ENTERPRISE. THIS UNDERSTANDING FALLS IN THE CATEGORY NEITHER OF AN ACROSS-THE-BOARD SCREENING NOR OF A FORMAL REPORTING PROCEDURE BUT RATHER IS A VOLUNTARY NOTIFICATION ARRANGEMENT. IT REPRESENTS A COMPROMISE BETWEEN THE GOVERNMENT AND PRIVATE INDUSTRY TO CALM SOCIAL AND POLITICAL UNEASINESS WITHOUT LEGAL MEASURES WHICH MIGHT CREATE UNFORESEEN DIFFICULTIES IN LONGER RANGE FOREIGN RELATIONS.

9. THE UNDERSTANDING WITH THE BANKS IS INTENDED TO BE NONDISCRIMINATING WITH REGARD TO NON-RESIDENT NATIONALITY BUT FOLLOWING ON THE HEELS OF SEVERAL LARGE OPEC INVESTMENTS IN GERMANY AND BECAUSE OF THE ENORMOUS AMOUNTS OF FUNDS HELD BY THE OPEC NATIONS, AND PRESUMABLY SEEKING PLACEMENT, THERE IS A CERTAIN DISCRIMINATORY ASPECT WHICH CANNOT BE FULLY CAMOUFLAGED. THE NOTIFICATION PROCEDURE SIMPLY ALERTS LIMITED OFFICIAL USE

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THE GOVERNMENT TO POTENTIAL FOREIGN INVESTMENTS OF MAJOR SIGNIFICANCE AND OFFERS THE GOVERNMENT TIME TO BRIEFLY REVIEW THE INVESTMENT AND, IF JUDGED NECESSARY, MAKE AN EFFORT TO KEEP THE INVESTMENT IN THE HANDS OF RESIDENTS. THERE ARE NO FIXED PROCEDURES FOR THE REVIEW OR GUIDELINES BY WHICH THE MINISTRY HANDLES EACH CASE.

10. IN AN EFFORT TO REMOVE ANY DISCRIMINATORY ASPECTS TO THE GOVERNMENT'S NOTIFICATION PROCEDURE AND ANY CRITICISM OF ACTION TAKEN IN CONNECTION WITH IT, THE FRG HAS ATTEMPTED TO REACH BILATERAL UNDERSTANDINGS WITH SOME OF THE MAJOR OIL PRODUCING NATIONS, AT THEIR INITIATIVE, WILL INFORM THE FEDERAL REPUBLIC PRIOR TO SIZABLE DIRECT INVESTMENTS. INFORMAL UNDERSTANDINGS HAVE BEEN REACHED WITH SAUDI ARABIA, KUWAIT, THE ARAB EMERATES AND IRAN.

11. REQUIRED REPORTING. SECTION 26 (2) OF THE FOREIGN TRADE AND PAYMENTS LAW SETS FORTH THE CONDITIONS UNDER WHICH COMPULSORY REPORTING OF TRANSACTIONS IN FOREIGN TRADE, INVESTMENTS AND PAYMENTS (OR RECEIPT OF PAYMENTS) MAY BE REQUIRED. SUCH REPORTING IN THE AREA OF INVESTMENTS MAY BE AUTHORIZED: (1) TO DETERMINE WHETHER CIRCUMSTANCES WARRANT THE IMPOSITION, MODIFICATION, OR RELAXATION OF RESTRICTIONS, (2) FOR PURPOSES OF BALANCE OF PAYMENTS ACCOUNTING, (3) TO

AFFORD REVIEW OF TRADE POLICY INTERESTS, (4) TO  
SATISFY OBLIGATIONS S UNDER INTERNATIONAL AGREEMENTS  
OR (5) TO MAINTAIN RECORDS FOR THE PURPOSE OF IMPLEMENTING  
THE DEPOSIT REQUIREMENT FOR CREDITS TAKEN UP ABROAD  
(SECTION 6A, PARAGRAPH 1 OF AUSSENWIRTSCHAFTSGESETZ).

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SIL-01 IO-10 PA-01 PRS-01 INT-05 FEAE-00 NEA-10 /113 W

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R 281830Z MAY 75

FM AMEMBASSY BONN

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12. REPORTING REQUIREMENTS FOR DIRECT INVESTMENTS ARE



COVERED IN SECTIONS 55 THROUGH 58 OF THE ORDINANCE TO THE FOREIGN TRADE AND PAYMENTS LAW (AUSSENWIRTSCHAFTS-VERORDNUNG). THESE REQUIREMENTS OBLIGATE THE DISCLOSURE OF THE IMPORT AND EXPORT OF CAPITAL EXCEEDING DM 10,000. THE REPORTS MUST BE SUBMITTED FIVE DAYS AFTER THE BEGINNING OF THE MONTH FOLLOWING THE TRANSACTION AND ARE SUBMITTED TO THE LAND CENTRAL BANK OF THE AREA OF LIMITED OFFICIAL USE

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THE DECLARING PARTY. CASES INVOLVING TRANSACTIONS OF LESS THAN DM 10,000 DURING A PARTICULAR MONTH BUT EQUAL TO OR ABOVE THIS FIGURE FOR THE CALENDAR YEAR MUST BE REPORTED BY FEBRUARY 5TH OF THE FOLLOWING YEAR. THE LAND CENTRAL BANK PASSES THE REPORTS TO THE BUNDESBANK WHICH IN TURN FORWARDS COPIES TO THE FEDERAL MINISTRY OF ECONOMICS. AGGREGATED REPORTS ARE PUBLISHED EVERY SIX MONTHS BY THE MINISTRY. THE LAW PROVIDES FOR THE CONFIDENTIALITY OF THE INDIVIDUAL LAND CENTRAL BANK SUBMISSIONS.

13. THE REPORTS TO THE LAND CENTRAL BANKS MUST INCLUDE THE NAME OF THE INDIVIDUAL MAKING THE TRANSACTIONS, THE COUNTRY AND THE ECONOMIC SECTOR. REQUIREMENTS OBLIGATE THE REPORTER ONLY TO PROVIDE FIGURES ON THE BOOK VALUE OF AN INVESTMENT. THERE ARE NO REPORTING PROCEDURES ON ACTUAL VALUE OF FOREIGN INVESTMENT. (SEE REF G FOR TRANSLATION OF REPORTING FORM.)

14. OPEC INVESTMENTS. ACCORDING TO THE LATEST GOVERNMENT REPORT ON DIRECT INVESTMENTS, FOREIGNERS INVESTED DM 4.48 BILLION IN GERMANY IN 1974. THE UNITED STATES LEAD WITH 28 PERCENT FOLLOWED BY SWITZERLAND WITH 23 PERCENT. OIL PRODUCING NATIONS' INVESTMENTS TOTALED 1.7 PERCENT. ALTHOUGH OPEC INVESTMENTS, AS A PERCENT OF THE TOTAL, ARE SMALL, THERE HAVE BEEN SEVERAL LARGE WELL PUBLICISED INDIVIDUAL INVESTMENTS -- NOTABLY AN IRANIAN INVESTMENT IN KRUPP AND A KUWAITI PURCHASE OF 14 PERCENT OF DAIMLER-BENZ (SEE REFTTEL I).

15. THE FRG IS STRONGLY MOTIVATED TO PRESERVE ITS OPEN-DOOR POLICY TOWARD INCOMING FOREIGN INVESTMENT, BUT IT IS FACED WITH AN UNDERCURRENT OF PUBLIC OPINION AGAINST A COMPLETELY OPEN DOOR WITH NO SAFEGUARDS TO ASSURE THAT VITAL INDUSTRIES REMAIN IN GERMAN HANDS. THIS PUBLIC CONCERN AND THE GOVERNMENT EFFORT TO DEAL WITH IT IS AN OUTGROWTH OF THE FACT THAT MANY OF THE POTENTIALLY "DAMAGING" INVESTMENTS -- I.E., CERTAIN OF THOSE FROM THE OPEC NATIONS -- ARE NOT NECESSARILY MADE FOR

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R 281830Z MAY 75

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ECONOMIC REASONS. SUCH TAKE-OVERS CANNOT BE EQUATED  
WITH FOREIGN INVESTMENTS WHICH GENERATE NEW PRODUCTIVE  
CAPACITY AND BRING IN NEW TECHNOLOGY AND BENEFICIAL

MANAGEMENT PRACTICES. FOR THIS REASON THE FRG HAS UNDER REVIEW SEVERAL MODIFICATIONS TO ITS LAW ON FOREIGN TRADE AND PAYMENTS WHICH WOULD ENABLE THE GOVERNMENT ON GROUNDS OF NATIONAL SECURITY TO DELAY OR BLOCK NON-RESIDENT INVESTMENTS IN SPECIFIC ENTERPRISES OR SECTORS (SEE REFTELS C, D, E, AND G). THE GENERAL DIRECTION OF LIMITED OFFICIAL USE

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THE CHANGES IN THE LAW, IF IT IS EVENTUALLY DECIDED THAT LEGAL CHANGES ARE NECESSARY, IS TO MAKE FOREIGN INVESTMENT AS TRANSPARENT AS POSSIBLE BUT AT THE SAME TIME AVOID A CASE BY CASE SCREENING PROCEDURE BY THE GOVERNMENT (SEE REFTEL G).

16. WHILE THERE HAVE BEEN A NUMBER OF OFFICIAL REFERENCES IN THE PAST SEVERAL MONTHS THAT A GROWTH IN INVESTMENTS FROM THE OIL PRODUCING NATIONS IN CERTAIN SECTORS OF THE ECONOMY PRESENT SPECIAL PROBLEMS WHICH MIGHT REQUIRE PROTECTIVE LEGISLATION, THE LATEST INDICATIONS ARE THAT THE GOVERNMENT WOULD PREFER NOT TO INTRODUCE IN PARLIAMENT ANY MEASURE WHICH WOULD DETRACT FROM THE FRG'S LIBERAL POLICY TOWARD CAPITAL FLOWS. SO FAR THE VOLUNTARY NOTIFICATION SYSTEM WITH THE BANKS SEEMS TO BE FUNCTIONING SATISFACTORILY (SEE REFTEL F) AND APPEARS TO HAVE DEFUSED FEARS THAT THE GOVERNMENT IS EITHER HELPLESS IN THE FACE OF LARGE FOREIGN INVESTMENTS OR IS DOING NOTHING TO PROVIDE SOME PROTECTION. THIS NOTWITHSTANDING THERE HAVE BEEN ACTIONS TAKEN BY CERTAIN INDUSTRIES TO LIMIT THE VOTING RIGHTS OF INDIVIDUAL INVESTORS TO A CERTAIN PERCENTAGE OF OUTSTANDING SHARES IRRESPECTIVE OF THE SIZE OF THE INVESTMENT. MANNESMANN, THE LARGE PRODUCER OF STEEL PIPES AND THE DEUTSCHE BANK, GERMANY'S LARGEST COMMERCIAL BANK, HAVE ALREADY TAKEN THIS STEP. BOTH HAVE LIMITED THE VOTING RIGHTS TO 5 PERCENT.  
HILLENBRAND

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** FOREIGN INVESTMENT, POLICIES, INVESTMENT LAW, INVESTMENT CONTROLS, LICENSES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 28 MAY 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** ElyME  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975BONN08594  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D750186-0821  
**From:** BONN  
**Handling Restrictions:** n/a  
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**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
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**Page Count:** 11  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** 75 STATE 107242, 75 BONN-A397, 75 AUGUST 5, 75 1974  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** ElyME  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 17 APR 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <17 APR 2003 by BoyleJA>; APPROVED <26 SEP 2003 by ElyME>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** FOREIGN DIRECT INVESTMENT IN GERMANY  
**TAGS:** EINV, XG, JA, AS, GE  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006